

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	Docket # 1768
)	
Robert J. Cosimini)	
Cook County Correctional Officer)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

The Respondent's, Robert J. Cosimini, (hereinafter "Respondent") position as a Cook County Correctional Officer involves duties and responsibilities to the public; and Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and The Respondent was personally served with a copy of the Complaint and Amended Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the amended complaint; and The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background:

By complaint dated June 20, 2014, the Cook County Sheriff Thomas J. Dart sought the separation from employment of Respondent. The complaint alleges Respondent on January 15, 2012 at approximately 1936 hrs., while on duty in RCDC, used excessive force against detainee [REDACTED] by approaching him from behind and pushing him in the back, and then kicking the detainee in the upper shoulder/neck/face while the detainee was held on the ground by Corrections Officer [REDACTED] causing injury. It further alleges that on February 21, 2014 the Respondent was interviewed and provided a signed statement to the Office of Professional Review about the incident and that this statement was not truthful. The complaint alleges that this violated several rules and regulations of the Cook County Sheriff's Department, and the Cook County Sheriff's Merit Board, specifically: Sheriff's Order 11.2.1.0 II, V E, VII sections A, B, E, X A4 and XIII A, B, and C and General Order 3.8 I, III A4 and D2 and D4, General Order 4.1 III A 17 and A18, Gen. Order 24.9.1.0 II and VII 1,2 C and F2, Sheriff's Order 11.2.2 0.0 II

D25 and H4 and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 1,2 and 3.

Issues Presented: Whether the actions of the Respondent violated any of the General or Sheriff's orders or Merit Board Rules set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that a violation of Sheriff's Order 11.2.1.0 II, V E, VII sections A, B, E, X A4 and XIII A, B, and C and General Order 3.8 I, III A4 and D2 and D4, General Order 4.1 III A 17 and A18, Gen. Order 24.9.1.0 II and VII 1,2 C and F2, Sheriff's Order 11.2.2 0.0 II D25 and H4 and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 1,2 and 3. occurred.

Findings of Fact: A combined evidentiary hearing along with docket number 1769, [REDACTED] was held on October 17, 2014 at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois before James P. Nally. Present were Petitioner by counsel and Respondent by counsel. Four witnesses testified for the Sheriff: [REDACTED] adversely and the Respondent Robert Cosimini adversely. The Respondent called [REDACTED] and [REDACTED] as witnesses.

Joint Exhibits 1-6, Sheriff Exhibits 1-8 and Respondents Exhibits 1 – 3 were admitted into evidence.

Evidence:

[REDACTED] testified he is a sergeant with the Cook County Department of Corrections working in the video unit. In that capacity he is in charge of all videos at the Department of Corrections. In relation to the incident on January 15, 2012 he spoke to superintendent [REDACTED] and was asked to retrieve video of the RC DC area on that date. He testified there are [REDACTED] video cameras in the receiving area. He testified he downloaded video of the intake area. The witness then explained the technical background of the video system and with multiple cameras there would be various videos of the site. He testified that he has a background in computer science and has been trained on multiple video systems. He testified that the video system was in working order and discussed the placement of cameras. In relation to the incident in question there were 4 video views. The videotape of the incident was admitted into evidence as well as video (without the audio portion) of the detainee showing his physical appearance after the incident. The witness testified he did not personally observe the events depicted on the video, and that he had worked as a corrections officer between 1996 and 2009 in criminal intelligence, gangs, correctional information and the investigations division as well as his current assignment in the Bureau of information and technology.

Witness [REDACTED] II testified that he is currently the first assistant executive director at the Department of Corrections. At the time of the incident in January 2012 he was Superintendent of receiving/record/classification. On or about January 15, 2012 he learned there was an incident that took place in the receiving room involving officers [REDACTED] and

Respondent, and he conducted an investigation. That consisted of review of the use of force reports and the incident reports, and signing off on those and sending those to his assistant director. He also reviewed the videotape that he obtained from Sgt. [REDACTED] Lieut. [REDACTED] the shift commander recommended that the video be forwarded to OPR. After [REDACTED] coming to him and his review of the video and discrepancies in the paperwork and the video, he forwarded the investigation to his assistant director, [REDACTED]. He then forwarded the video to OPR. The witness then testified in regard to Exhibit 3, the use of force report. He found that there were inconsistencies with the report and the video. The witness testified that the report submitted by the Respondent did not say anything about him kicking or pushing the detainee. It did state that the detainee was not responsive to verbal direction. The witness testified he never interviewed the Respondent, nor was he present for any interviews.

Corrections Officer [REDACTED] [REDACTED] stated he was currently assigned to receiving working at a courthouse during processing at the present time. He believed he may have been involved in another use of force case. He was shown the use of force report he created in relation to this incident on January 15, 2012 which was done within 5 to 10 min. of the incident. He testified he encountered the detainee [REDACTED] during movement in the tunnel. The witness viewed the video and described the area known as the pit. The witness identified himself and the Respondent in the video as well as another officer. The witness testified the video showed him and the Respondent behind the detainee and testified that the video showed the Respondent pushing the detainee. He did not remember the detainee attempting to bite him. He identified on the video the Respondent kicking the detainee on the ground. He remembered the incident at the time where the detainee refused to follow orders and profanely asked to use the telephone. He stated that after the inmate asked use telephone the video showed the Respondent pushing him, although the witness did not see that at the time of the incident. The witness testified he was standing less than a foot away with his head up but did not see the push. He was not on any medication at the time. The witness viewed another view of the incident on the video and stated that the detainee made contact with him, he felt pressure and then took the detainee down for emergency handcuffing. This was not reflected in his report. The witness testified he never saw the Respondent make any physical contact with the detainee. The witness had physical contact with the detainee when he brought him down to the ground. The witness stated that the general orders do not allow the use of force for an inmate who is not responsive to verbal direction. The witness testified he used force on this detainee because he was charged and he was actively resisting and not following verbal commands. The witness testified the detainee attempted to get past him and made contact, but did not pass them. The witness testified his report showed that the detainee was taken for medical treatment for injuries to his right eye and right shoulder. After the incident the witness secured the detainee in the bullpen and notified his Sgt. He testified as to another view of the video that he did not walk the detainee into a wall, but had to brace himself against the wall because the detainee was moving his body. The witness stated that the video showed that the detainee was in front of him although his report to OPR said he was at the front of the line and the inmate turned and lunged at him. He testified that the Respondent did not use OC spray although it was displayed. In reviewing the reports the witness testified that he never put in the report that he made physical contact with the detainee.

The Respondent testified as a witness in the Sheriff's case. He testified he had never been sued by an inmate but had prior use of force cases. On January 15, 2012 he was assigned either to the pit or PREA. In PREA the job is to ask detainees questions about themselves, where in the pit they are taking pictures and fingerprints and booking the inmate. The Respondent stated he did push detainee [REDACTED]. In regard to the statement to OPR on February 21, 2014 he stated detainee [REDACTED] was in the back of the line but slightly in front of Respondent and Ofc. [REDACTED]. In his statement he said that the detainee left the line and lunged toward [REDACTED]. The Respondent testified he pushed the detainee prior to him lunging at any officer. He testified he gave a stun kick to the detainee because he saw him attempting to bite [REDACTED]. He did not want to use the OC spray in close quarters. After delivering the stun kick he had no further contact with the detainee and did not see him for 25 minutes to serve him with paperwork. He did not recall seeing injuries on him. The Respondent testified in regard to the use of force form he completed that he did not state in there that he never pushed the detainee but rather checked boxes. In relation to the disciplinary report he was shown, he did not anywhere state that he had kicked detainee [REDACTED] because he attempted to bite [REDACTED]. He stated he pushed the inmate to create a safe separation between him, [REDACTED] and the detainee who had clenched his fists. The Respondent testified he perceived an immediate threat of battery. The Respondent testified he never read [REDACTED] incident report until discovery in this case. He would characterize the detainee as a mid-level assailant when he clenched his fist, which he believed could cause physical injury to an officer. He remembers the detainee screaming profanity wanting to use the phone. Once he clenched his fist the Respondent believed there was an immediate threat of battery and he did not need to give a verbal order to the detainee. The Respondent said he was never interviewed by any disciplinary authority as a result of his incident report. He does remember getting use of force training. He testified that based on training that once there's a threat of eminent battery officers are allowed to create a separation for the safety of officers and other detainees.

[REDACTED] testified in the Respondent's case in chief that he was the chief union steward for Teamsters Local 700 and also a correctional officer. He represents members at grievances and other hearings.

[REDACTED] testified he was retired after 28 years at the Cook County Department of Corrections, retiring at the rank of commander and had previously held positions as Capt., Superintendent, assistant director, chief Lieut., Sgt., and officer. He testified he had been involved in 2011 giving use of force training to sworn members of the department. He specifically remembered the Respondent being at one of the training dates that he performed training. The witness testified about active and passive resistance and the proper responses. He testified about particular hypothetical situations as to when each type of resistance would be present, and the proper response. He testified regarding the use of force to stun a detainee who was resisting on an ongoing basis, using a fist and elbow, knee or foot. The witness testified he had seen the video of the incident in question but only from the point showing the Respondent pushing the inmate, he did not know what happened prior to that. The officer would have to take in the totality of the incident to determine if use of force was proper. The witness testified he was now a business agent for the Teamsters and had conducted mandatory use of force training while he was employed by the Sheriff. This one-day training was required by the Department of Justice for all sworn officers. The witness testified as to the various topics that were covered during the

training. The training covered the use of force reports or incident reports and how to properly document it. The witness testified that the training was specifically tied to the General orders regarding use of force. He also testified that if the detainee [REDACTED] had used a phrase demanding to use the phone with profanity that in itself would not justify use of force. He again reiterated the totality of the circumstances addressed the use of force. The witness further testified that it would not be permissible for an officer to check that he applied a stun kick to the detainee and then not include that in his narrative.

[REDACTED] [REDACTED] was recalled as a witness. He testified that approximately 7:36 PM on January 15, 2012 he was inside the receiving area and attempting to move the line out of the tunnel. He testified although they are allowed to handcuff detainees in receiving, the volume of people 150 to 250 per day, makes that infeasible. He testified on that date the detainee charged him when he was trying to move him out of the tunnel and made physical contact with the front of his body, and that he took the detainee to the ground to initiate emergency handcuffing. On the ground he was still actively resisting, which made him unable to handcuff him and officer Cosimini came in and assisted him. He took out his OC spray but did not use it. He testified that they jointly pick the detainee up off the floor after he was handcuffed, secured him in the bullpen, and then he notified his immediate supervisor. The witness testified he never observed Respondent push the detainee. He was interviewed by phone by OPR a few days after the incident but heard nothing further. He testified his memory was clear once he saw the videotape of the incident.


Findings:

The Board finds that the evidence shows that Respondent did violate all the General Orders and Merit Board rules as charged. The Respondent did not testify accurately as to the events that occurred with detainee [REDACTED]. Although the detainee may have been verbally abusive, using profanity and demanding to use the telephone, it is very clear from the general orders and the use of force orders specifically that verbal misbehavior by a detainee does not justify the use of physical force unless a threat of force by the detainee is imminent. The videotape from all the different cameras does not show any activity by the detainee that would justify the use of force under those circumstances. The Respondent's testimony that the detainee left the line and was lunging towards Officer [REDACTED] is not supported by the video. Indeed, the testimony of the Respondent regarding where the detainee was in the line was inaccurate, as the Respondent clearly came at the detainee from behind and pushed the detainee in the back. Further, in relation to the report that he filed, it was not an accurate report since he did not fully disclose that he had kicked the detainee because he was attempting to bite officer [REDACTED]. Officer [REDACTED] testified the detainee had not attempted bite him. [REDACTED] testified that if an officer is required to stun kick or use other force to restrain an actively physically resisting detainee, that use of force should have been recorded in his report specifically. This information was not contained in the Respondent's report nor was it disclosed by the Respondent to OPR. Both the Respondent and [REDACTED] specifically testified regarding the Respondent's having use of


force training, and the Respondent should have been familiar with the rules and acted with proper restraint despite the verbal obnoxiousness of the detainee.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Merit Board finds that the Respondent did violate Sheriff's Order 11.2.1.0 II, V E, VII sections A, B, E, X A4 and XIII A, B, and C and General Order 3.8 I, III A4 and D2 and D4, General Order 4.1 III A 17 and A18, Gen. Order 24.9.1.0 II and VII 1,2 C and F2, Sheriff's Order 11.2.2 0.0 II D25 and H4 and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 1,2 and 3.

Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent Robert J. Cosimini be separated from employment June 20, 2014.



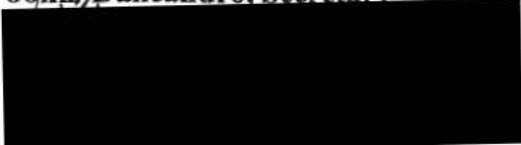
James P. Nally, Chairman



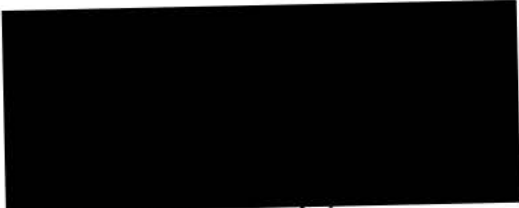
Byron Brazier, Vice Chair




John Dalicandro, Secretary



Brian J. Riordan, Board Member



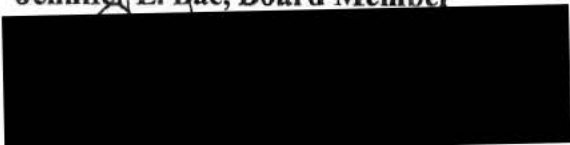
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Jennifer E. Bae, Board Member



Patrick Brady, Board Member

Dated October 15, 2015